IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 285 of 2007

Date of Decision: 24.09.2007

Rakesh Mahajan

…Appellant

Versus

Commissioner of Income Tax, New Delhi

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Pankaj Jain, Advocate,
for the appellant-assessee.

M.M. KUMAR, J.

The assessee has approached this Court by filing instant appeal under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), challenging order dated 11.8.2006, passed by the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi (for brevity, 'the Tribunal'), in IT (SS) No. 215/D/2003, for the block period 1.4.1990 to 29.8.2000 (A-1). It is claimed that the following questions of law would arise for our determination:-

"(i) Whether the Tribunal conclusions are perverse by interpreting the paper note as a dying declaration under Section 32 of the Indian Evidence Act, 1872?

(ii) Whether the Tribunal has misconceived on having made the assumption of facts of the cash paid

without determining the relatability and the longevity of the same to the block period?

(iii) Whether the judgment of the Tribunal is correct by having given two differential treatments of the same cause of action of the addition which have attained finality since not challenged by the respondent?

Brief facts of the case are that on 29.8.2000 a search and seizure under Section 132 of the Act was conducted at the residence of the assessee. On 18.5.2001, a notice under Section 158BC was issued requiring the assessee to file return for the block period 1.4.1990 to 29.8.2000. The assessee filed his return for the aforementioned block period on 17.7.2001, declaring total undisclosed income as 'NIL'. Thereafter, on 17.6.2002, notices under Sections 143(2) and 142(1) of the Act were issued to the assessee. The assessment was completed on 29.8.2002. On the basis of a note, which was seized during search with the heading "Just in case", the undisclosed income of the assessee was assessed at Rs. 5,29,750/- (Annexure A-3). It has been claimed by the department that the aforementioned note was written by the assessee at the time when he was about to be taken to the operation theatre for a surgery on 21.10.1995. The relevant portion of the note on which reliance has been placed by the Assessing Authority reads as under:-

"Just in case"

"Tyagi has a cash entry of Rs. 4,11,000/- ask him to withdraw this money from PFL & give you the cash".

Penalty proceedings under Section 158BFA(2) of the Act were also initiated.

The assessee then filed an appeal before the Commissioner of Income Tax (Appeals), which was allowed vide order dated 10.2.2003 and various additions concerning unexplained money were deleted (Annexure A-2).

The Tribunal rejected the submission made by the assessee that the statement was made by him under emotional stress or anxiety because the assessee has made a detailed note of all his accounts and receivables. The note was written by him at the time when he was about to be taken for surgery. The Tribunal has treated the note as good as a dying declaration because it contains realistic account of the assessee and the assertions made in the note are quite significant as the note contained the details of properties/assets held by the assessee which has been rightly entitled '*just in case*'. It is significant that the note mentions a cash entry of Rs. 4,11,000/-, which was given to Tyagi, which in the ultimate result family was to receive back from Tyagi. The Assessing Officer vide his questionnaire dated 17.6.2002 required the assessee to furnish complete address of Tyagi and explain the entry to which mention has been made in the note. He was also asked to explain why the amount should not be added as unexplained income. The Tribunal also held that no satisfactory explanation has been furnished and the question was not to depend on whether such sum was given to Mr. Tyagi or not. The statement in the note has been regarded as correct and complete revelation of the assessee made in contemplation of death, which leads to the conclusion that the assessee at the first instance has

given a sum of Rs. 4,11,000/- to Mr. Tyagi and the after effect of the entry given to Mr. Tyagi has since not been explained satisfactorily by the assessee, it has been considered as unexplained income in the hands of the assessee. The Tribunal, therefore, added the amount under Section 69 of the Act. The Tribunal has further held that it was not a case of double addition nor it was a case of addition in two hands. Holding that the CIT (A) committed error, the Tribunal held that the addition was deleted in the case of Pan Foods Limited because no such entry was available in their books of accounts, which could be called as fictitious entry. The assessee since has not discharged the onus to prove that he did not give any sum to Mr. Tyagi, the amount has been rightly added to his unexplained income.

Mr. Pankaj Jain, learned counsel for the assessee has argued that the approach of the Tribunal is wholly erroneous, inasmuch as, the statement of the assessee, who is a living human, has been treated as '*dying declaration*'. According to the learned counsel in order to fit in the definition of expression '*dying declaration*' it is *sine qua non* that the statement must have been made by a dead person in relation to cause of his death or in all the circumstances which has led to his death, as contemplated by Section 32(1) of the Evidence Act, 1872 (for brevity, 'the 1872 Act'). Learned counsel has submitted that such a statement cannot constitute a basis for sustaining the findings recorded by the Tribunal that somebody called Tyagi was given cash entry of Rs. 4,11,000/- and that he was to be asked by the family to withdraw the amount from PFL to pay in cash. Learned counsel has maintained that such an approach is wholly

unsustainable and the order of the Tribunal is liable to be rejected while answering the questions of law in favour of the assessee.

We have thoughtfully considered the submissions made by the learned counsel and are of the view that there is no merit in this appeal. It is well settled that admissions constitute best piece of evidence because admissions are self-harming statement made by the maker believing it to be based on truth. It is well known that no one will tell a lie especially harming ones' own interest unless such a statement is true. Section 17 of the 1872 Act defines admission to be a statement, oral or documentary, which suggests an inference as to any fact in issue or relevant fact which has been made by a party to proceedings or his agent and others as per details given in Sections 19, 20, 21, 22 and 23 of the 1872 Act. If an admission has been made by a party to proceedings under Section 17 and 18 of the 1872 Act, suggesting an inference that the income was unexplained then such an admission is an admissible piece of evidence. Admissions have also been regarded as substantive evidence because it sustains their veracity from the fact that maker has said something against his own interest. Moreover, in the present case the assessee has made a self-harming statement in a note just before his entry to an Operation Theatre for a surgery, titled as '*Just in case*'. The note has clearly stated that somebody called Tyagi has a cash entry of Rs. 4,11,000/-, who was to be told to withdraw that money from PFL and the family was to get the cash. The admission was put to the assessee in the form of questionnaire by the Assessing Officer, who has stated that the questionnaire dated 17.6.2002, was prepared by him and the assessee was required to furnish complete address of Mr. Tyagi to

explain the entry of Rs. 4,11,000/-. The assessee was also asked to explain why the aforementioned entry be not added as his unexplained income. As no satisfactory explanation was furnished, the Tribunal has rightly reached the conclusion that the assessee had given a sum of Rs. 4,11,000/- to Mr. Tyagi irrespective of the fact whether Mr. Tyagi ultimately gave such an amount or not. The Tribunal has categorically concluded that it is neither a case of double addition nor a case of addition in two hands.

It is true that the Tribunal has committed error in treating the statement made by the assessee as a statement in the nature of '*dying declaration*'. Statement of a dead person is a relevant fact in cases where it relates to cause of his death or is made in due course of business or against interest of maker. The basic ingredients that the statement has to be of a 'dead person' in order to constitute '*dying declaration*' is missing in the present case and, therefore, the Tribunal could not have opined that the statement was in the nature of '*dying declaration*' or it was as good as '*dying declaration*'. It is, however, equally true that the statement made by the assessee in the instant case has been made in contemplation of death. Once a statement is made in contemplation of death then its veracity is supported by impending fear of death because once a person is anticipating his demise then all his interest in this world comes to an end and he is supposed to make a truthful and correct statement. The contemplation of death has been regarded as equivalent to administration of oath. Therefore, even if the statement made by the assessee cannot be regarded as '*dying declaration*', it has to be regarded as admission within meaning of Sections 17 and 18 of the

1872 Act, which has further been supported for its veracity emanating from contemplated death. Moreover, the maker of the statement has been confronted with it, given adequate opportunity to explain and in the absence of any satisfactory explanation, the statement has been rightly relied upon by the Assessing Officer as well as by the Tribunal. It is, thus, clear that despite the fact that the statement is not regarded as '*dying declaration*' it cannot be brushed aside giving benefit to the assessee.

In view of the above, questions Nos. 1 and 2 are answered against the assessee-appellant. Question No. 3 has not even been pressed by the counsel and, therefore, does not need to be commented upon. Accordingly, the appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 24, 2007

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